

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

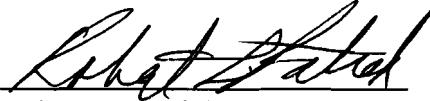
IN THE MATTER OF)
)
C & R Plating, Inc.)
)
)
)
Respondent)
_____)

Docket No. RCRA-07-2007-0003

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 12 of the Consent Agreement and Final Order is authorized in this proceeding. Complainant shall immediately file the original page 12 upon receipt from Respondent, and the original shall replace the facsimile page 12.

Dated: March 30, 2007



Robert L. Patrick
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
C & R Plating, Inc.)
1120 East 10th Street)
Minneapolis, Kansas 67467)
)
RCRA I.D. No. KSR000504803)
)
Respondent.)
)
Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2007-0003

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and C & R Plating, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). Specifically, Respondent violated K.A.R. 28-31-4(b), incorporating 40 C.F.R. § 262.11; and K.A.R. 28-31-4(d), incorporating 40 C.F.R. § 262.20.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air, RCRA, and Toxics Division of the EPA, Region 7, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985; EPA Delegation No. R7-8-9-A, dated January 1, 1995 and R-DIV-8-9-A, dated June 15, 2005.

4. The Respondent is C & R Plating, Inc. (Respondent), a company incorporated under the laws of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

Factual Background

7. Respondent is a Kansas corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 1120 East 10th Street, Minneapolis, Ottawa County, Kansas, is a full-service electroplating business offering zinc plating and chromate conversion services for steel and iron parts. Respondent employs approximately 14 people. Respondent has operated at this location since approximately 1994.

9. Respondent generates hazardous waste, as that term is defined in 40 C.F.R. § 260.10, as a result of its electroplating operations.

10. On or about March 1, 2006, Respondent notified the Kansas Department of Health and Environment (KDHE) that it is an EPA generator (large quantity generator) of hazardous waste. EPA and large quantity generators generate 1,100 kg (2,200 pounds) or more of hazardous waste per month.

11. Respondent has been assigned the facility identification number KSR000504803.

12. On or about February 7, 2006, an EPA representative conducted a Compliance Evaluation Inspection at the Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violations

13. Complainant hereby incorporates the allegations contained in paragraphs 1 through 12 above, as if fully set forth herein.

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

14. Pursuant to 40 C.F.R. § 262.11, and K.A.R. 28-31-4(b), a generator of a solid waste, as defined in 40 C.F.R. § 260.10, is required to determine if a solid waste is a hazardous waste.

15. At the time of the February 2006 inspection, Respondent was generating three solid waste streams: waste water treatment sludge, caustic soda tank slurry, and muriatic acid tank slurry.

16. Respondent had not conducted a hazardous waste determination on the three solid waste streams at that time.

17. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. §262.11 and K.A.R. 28-31-4(b).

COUNT 2
FAILURE TO COMPLY WITH THE MANIFEST SYSTEM

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

19. Pursuant to K.A.R. 28-31-4(d), and the regulations contained at 40 C.F.R. § 262.20, a generator of hazardous waste which transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal must prepare a hazardous waste manifest and must designate on the hazardous waste manifest a facility which is permitted to handle the waste described on the hazardous waste manifest.

20. At the time of the February 2006 inspection, Respondent was generating three waste streams: waste water treatment sludge, caustic soda tank slurry, and muriatic acid tank slurry. Respondent had not conducted a hazardous waste determination on the three solid waste streams at that time.

21. The inspector observed sludge in the bottom of a trash dumpster outside the Respondent's facility. Respondent explained that the three waste streams were regularly disposed of in the general trash, and transported via Minneapolis Refuse to the county landfill. Respondent could not provide any manifest documentation for the waste streams.

22. After the inspection, hazardous waste determinations were made on the waste water treatment sludge, caustic soda tank slurry, and muriatic acid tank slurry. The waste water treatment sludge and caustic soda tank slurry exceeded the regulatory level for chromium, and thus is D007 hazardous waste. The muriatic acid tank slurry exceeded the regulatory level for pH, and is a D002 hazardous waste.

23. Respondent's failure to comply with the hazardous waste manifest requirements for off-site shipments of three hazardous waste streams is a violation of K.A.R. 28-31-4(d) and 40 C.F.R. § 262.20.

III. CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

25. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent

proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

26. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

28. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

29. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

30. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

32. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$ 11,323.00 as set forth in paragraph 36 of the Final Order.

33. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

34. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

35. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 59 of the Final Order, that all requirements hereunder have been satisfied.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

36. Respondent shall pay a mitigated civil penalty of \$ 11,323.00, plus interest of \$ 246.80 over a period of twelve (12) months for a total payment of \$ 11,569.80. The total civil penalty of \$ 11,323.00 shall be paid in monthly payments of \$ 964.15 each. The first payment must be received at the address in paragraph 38 below on or before thirty (30) days after the effective date of the Final Order. Each succeeding payment will be due thirty (30) days after the previous payment.

37. Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) on the unpaid balance until such civil penalty and accrued interest are both paid in full. As provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) will be assessed on any amount not paid within ninety (90) days of the due date.

38. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2007-0003 on each check. A copy of each check shall also be mailed to:

Kelley Hickman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

39. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

40. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

a. Respondent shall review its hazardous waste generation rate upon completion of the Supplemental Environmental Project (SEP) described in paragraphs 43-46. Within thirty (30) days of completion of the SEP, and in conjunction with the Final SEP Report described in paragraph 46, Respondent shall notify EPA whether Respondent's hazardous waste generation rate has been altered as a result of the SEP. If Respondent's generator status changes, Respondent shall properly notify KDHE and provide EPA a copy of the notification within sixty (60) days of completion of the SEP.

b. Beginning on the effective date of the Final Order, and continuing for a period of one year on a monthly basis, Respondent shall submit to EPA copies of all Manifest forms within thirty (30) days of each shipment of hazardous waste from the facility.

41. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Kori Kuehl
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

C. Supplemental Environmental Project

42. In response to the violations of RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by RCRA or any other federal, state

or local law, Respondent shall complete the Supplemental Environmental Project (SEP) described in paragraphs 43-46, which the parties agree is intended to secure significant environmental or public health protection and improvement.

43. Respondent shall install a sludge dryer to its on-site waste water treatment system. Respondent shall complete the SEP as follows: purchase a sludge dryer which removes at least 94 pounds of water per hour when in operation, install the sludge dryer, and initiate operation of the sludge dryer. Installation of the sludge dryer includes installation of any and all necessary infrastructural support required to operate the sludge dryer. The sludge dryer shall use heat to dehydrate the waste water treatment sludge, and thereby remove excess water, which will reduce the volume of hazardous waste the Respondent must manage as hazardous waste. The sludge dryer shall come equipped with a fume scrubber which will remove particulates from air emissions during operation of the sludge dryer.

44. Respondent shall expend a minimum of \$51,554 in approvable costs in performance of this SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order.

45. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

46. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit to EPA a Final SEP Report. This report shall provide a detailed description of the SEP as implemented and estimate the measurable reduction in pollutants generated and/or reduction in pollutants released to the environment as a result of the SEP. The report shall also document all approvable costs incurred during the implementation of the SEP. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA. Upon receipt of the report, EPA will approve, disapprove, and/or provide comments in accordance with paragraph 50.

47. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

48. Respondent agrees that in any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and

Recovery Act.

49. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times, to monitor Respondent's implementation of the SEP and performance of required compliance actions. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

D. Review of Submissions

50. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the Parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submission, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification/approval.

E. Stipulated Penalties

51. In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 43 through 46 above, then pursuant to the EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$34,000. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$4,000. If Respondent fails to timely submit the final SEP Report required by paragraph 46, Respondent shall pay a stipulated penalty in the amount of \$500 per day for each day after the date upon which the report is due, until the submission is finally submitted.

52. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of paragraph 38 of the Final Order. Interest and penalties on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 37 of the Final Order. Stipulated penalties begin to accrue on the day after performance is due, regardless of when payment is demanded by EPA.

F. Parties Bound

53. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of

this Consent Agreement and Final Order.

G. Reservation of Rights

54. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

55. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

56. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

57. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

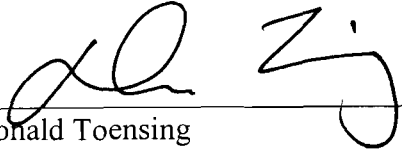
58. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

59. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Complainant:
The United States Environmental Protection Agency

3-28-07

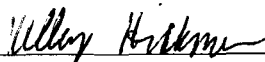
Date



Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

3/28/07

Date



Kelley Hickman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

For Respondent:
C & R Plating, Inc.

3-28-07
Date

Kevin Clive
Signature

Kevin Clive
Printed Name

President
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

March 30, 2007
Date

Robert Patrick
Robert Patrick
Regional Judicial Office

IN THE MATTER OF C & R Plating, Inc., Respondent
Docket No. RCRA-07-2007-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kelley Hickman
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

James H. Andreasen
Shook, Hardy & Bacon, LLP
2555 Grand Boulevard
Kansas City, Missouri 64108

Dated: 4/2/07


Kathy Robinson
Hearing Clerk, Region 7